Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of:	**)**	
Revision of Procedures Governing	**)**	
Amendments to FM Table of	**)**	**MB Docket No. 05-210**
Allotments and Changes of	**)**	**RM - 10960**
Community of License in the Radio	**)**	
Broadcast Services	**)**	

To: The Commission

COMMENTS OF
BRANTLEY BROADCAST ASSOCIATES, LLC

415 North College Street
Greenville, AL 36037
334.382.3239

12585 Old Highway 280
Yellowleaf Creek Landing
Suite 102
Chelsea, AL 35043
205.618.2020

October 03, 2005

TABLE OF CONTENTS

SUMMARY

The current procedures whereby the Commission reviews and rules on licensee requests for allotment and broadcast modifications are flawed and in need of repair. It is not uncommon for simple petitions for rule makings (or counterproposals) to remain on file with the Commission for more than three years, and in recent years the Commission's means of revising its procedural rules have seemed rather arbitrary. Change is necessary not only because it is in the best interests of both the Commission and licensees for such practices to end, but also because we live in an increasingly changing, mobile society and broadcast media must adapt to such changes.

As a result, Brantley Broadcast Associates, LLC ("BBA") is submitting its Comments to the NPRM (defined below). First, the Commission should permit AM and FM station community of license changes by minor modification. Such a procedure would allow for a more expeditious and orderly decision-making process and would allow the intertwining of AM and FM stations in contingent applications and in the rule making process. However, limiting the number of stations that could be involved in such a procedure would be a serious flaw and would create more problems than it solves.

Second, the Commission should mandate the filing of Form 301 in connection with filing petitions to amend the Table of Allotments to add an FM allotment. This would significantly reduce the number of "frequent filers" of such petitions and would limit such filings to the serious broadcasters.

Third, the Commission should not limit the number of channel changes that may be proposed in one proceeding to amend the Table of Allotments. The purpose of such limit would appear to be aimed at limiting the complexity of the engineering which the Commission must

review rather than to protect the public interest. Such a limitation would not provide the relief the Commission desires. In addition, it would limit the creation of station and spectrum opportunities in rural markets and would stifle the creativity of licensees, attorneys, engineers and broadcast developers. BBA is proposing herein that the Commission institute a system of tiered filing fees based on the number of stations involved in such proceedings. It is our hope that this system would help allay the Commission's concerns regarding complexity and allocation of resources with respect to more complicated proceedings.

Finally, BBA responds to the Commission's request for comment as to the circumstances under which relocation of a community's sole local transmission service to become another community's first local transmission service is in the public interest. BBA proposes that, should the Commission institute a rule allowing such a relocation, such rule should be enacted as proposed by First Broadcasting in the NPRM, taking into consideration the modifications proposed by AMS and Keymarket.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Revision of Procedures Governing	)	
Amendments to FM Table of Allotments and	)	MB Docket No. 05-210
Changes Of Community of License in the	)	RM - 10960
Radio Broadcast Services	)	

To: Office of the Secretary

COMMENTS

I. INTRODUCTION AND GENERAL COMMENTS.

Herein are the comments of Brantley Broadcast Associates, LLC ("BBA") to the Notice of Proposed Rulemaking (the "NPRM") set forth in MB Docket No. 05-210. In the NPRM the Commission is inviting comments on its proceeding to consider certain procedural changes for modifying the FM Table of Allotments. In addition, the NPRM is seeking comments on other proposed changes to the procedures by which modifications are made to broadcast facilities (i.e., proposing that changing the community of license ("COL") of an AM station would be considered a "minor change", thus requiring only the filing of an application). BBA notes that the NPRM is very succinct and that comments are sought as to procedural matters only. It is our understanding that the Commission is proposing no changes to the substantive nature or process used in making allotment and/or broadcast modifications.

Before discussing BBA's positions on the various issues addressed in the NPRM, some general observations are necessary. First, it is quite obvious that, other than the processing of standard Form 301 applications for minor changes, the current system is in desperate need of repair. It is not uncommon for simple petitions for rule makings (or

counterproposals) to remain on file for over three years without any resolution. Second, even though the NPRM contains many useful suggestions for streamlining, embedded within the NPRM are items which appear to be geared more toward reducing the Commission's workload than fulfilling the Commission's commitment to protect the public interest. Finally, during the last three years the Commission's method of making procedural changes has seemed rather arbitrary, often abandoning established precedent and changing policy without prior notice. Nothing in the instant NPRM should be interpreted to give the Commission permission to continue this practice.

BBA is a small-market broadcast operator and developer. It has had extensive experience and exposure to the Commission's procedural methods in approving broadcast spectrum modifications over a period of fifteen years. It welcomes the opportunity to comment on the items set forth in the NPRM and feels that this opportunity provides a vehicle to clarify and solidify certain procedural matters.[1] The procedural changes proposed in the NPRM could be a welcome departure from the volatile and liquid procedural changes experienced during the past three to four years. In the current environment, it is often impossible to anticipate the outcome a modification's filing since the Commission may abandon good precedent and make critical procedural changes without seeking public comments. This leaves the petitioner and its legal and technical counsels with little recourse other than filing for reconsideration. Reconsiderations dramatically increase the workload of the Commission's staff.

Consequently, the Commission must give careful attention to the true intentions of First Broadcasting's requests. The NPRM was issued to determine the validity of the

[1] For the sake of brevity, BBA will use the term 'enhancement' in lieu of AM or FM station upgrades, site relocations, change in community of license, etc. In essence the term is used to relate a licensee's desired improvement to its current aural coverage area.

proposals set forth by First Broadcasting and not as a tool to be used by any parties, including the Commission, to advance its own agenda. The aim is to streamline the process, not to modify the procedure in one point and fatally restrict it in another…thereby rendering the new modification procedures useless.

The broadcast spectrum is liquid and dynamic in nature. It needs to be flexible to meet the needs of a changing and increasingly mobile society. The broadcast media (especially radio) is in an increasing, daily struggle for the time and attention of the general public. Yet in times of societal need for immediate local, regional and national news and information (as with the recent hurricane disasters), radio is the medium at the forefront meeting such need. The natural order is that broadcast signals follow the population groupings from rural to metropolitan areas as the rural areas diminish and urban areas expand. This redistribution of the spectrum insures the availability of aural signals in special times of need to the greatest number of people. In addition, general information, entertainment and news are better enhanced when additional signals are available to allow the provision of programs for specific age groupings.

BBA raises this point because it appears that, in the NPRM, the Commission could be developing the position that any redistribution of the broadcast spectrum towards metropolitan areas is, on its face, not in the public interest. BBA, without reservation, can verify that small market aural services are often enhanced as a result of larger market modifications. In fact, BBA and its affiliated companies have worked directly on fifteen small market aural signal enhancements that were created as a direct result of large petitions for rule makings involving large market modifications. It is impossible for BBA, or any other party interested in a procedural system that expedites its applications and petitions before the Commission, to comment on the Commission's

proposal to eliminate the Table of Allotments since the NPRM is so vague as to why this is needed and exactly how its successor would work.

The final precursor to BBA's comments is a clarification of the term "in the public interest." Regrettably, over a period of time the Commission has appeared to interpret this statement to apply to the Commission's regulatory and approval workload rather than to the Commission's desire to strive for the maximum utilization of the spectrum. Although BBA discusses this issue in more detail below, BBA simply wants to make the point at this time that the item placed in the NPRM as the Commission's "own motion" appears to be based not on an effort to truly meet the public interest but on an effort to reduce the complexity of the staff's work load. If the NPRM is adopted in a form that at all resembles the form which was submitted for comments, the staff will have more than enough time to address all the remaining petitions and applications regardless of complexity.

II. COMMENTS ON PROPOSED RULE CHANGES.

A. The Commission Should Permit AM and FM Station Community of License Changes by Minor Modification.

1. Changing AM stations' community of license by application (minor change) is in the public interest.

The current AM application process is chaotic at best. Filing windows often force well-meaning licensees and applicants to wait several years for an approval. As an example, consider the following scenario:

> An AM station with nighttime power has a highly restrictive directional pattern. Over a period of several years the population of its community of license has shifted by several miles, even to the point that its NIF does not continue to cover its intended audience. Property is available for a new

> antenna site closer to the area of its audience, but the new site radiation limits do not allow the required NIF over 80% of the current community of license. Therefore, the licensee has to wait for an AM filing window, which could be up to two years away. When filed, its nighttime radiation can be mutually exclusive with applicants hundreds of miles away. Even if the MX applicants' applications are defective and can never be constructed due to technical errors, the existing licensee has to enter into a 307(b) comparison with the MX applicants. In this process the licensee could possibly lose for an extended period of time based not on the technical qualities of each application but on 307(b). Furthermore, this delay will continue until the Commission's technical staff has determined that all MX applications (assuming they are not excluded under 307(b)) are not technically qualified for a grant. This process could involve an additional two to three-year wait. In the meantime the public interest is not served by the licensee's audience not receiving the programming it needs, and the licensee suffers the financial burden of operating a station whose nighttime pattern has remained static and whose audience has relocated.

If the instant licensee were able to file a minor change application to relocate its antenna site, the grant of such application resulting in the change of its community of license would not be completely guaranteed due to NIF limitations. However, it would allow for an expeditious and orderly decision-making process on the part of the licensee concerning the future of its AM radio station.

Another reason that changing an AM station's community of license by application (minor change) is in the public interest is that the current Commission policy

is to not allow a change in the community of license of an AM station except in a major change window, even if the AM station proposes no technical change. Therefore, the use of AM stations in any FM rule making process is completely eliminated. This is another area in which the Commission has never made clear the reasoning behind its policy, how such policy began, or how the public interest is benefited. In many instances a preferential arrangement of the FM Table of Allotments could be instituted if not for the new Commission policy of not allowing vacant allotments to serve as remaining service to a community as the only FM service is removed. Although the procedure of disallowing of the vacant allotments procedure was put into place without prior notice from the Commission, and without any regard for precedent, the rationale for such procedure does have merit. However, allowing the use of AM stations due to the restriction that allows filing only in AM application windows has no such merit. AM filing windows must be abandoned and, simultaneously, all AM modifications, both legal and technical, made a minor change. This would allow the intermingling of AM and FM stations in contingent applications and in the rulemaking process. In addition, the Commission needs to institute a NPRM and seek comments to allow NCE stations to change communities of license by minor change applications.

2. Changing FM stations' community of license by application (minor change) is also in the public interest.

While the changing of an FM station's community of license by application (minor change) is a possible answer to the three or more years' wait often required before a petition is granted, it is the additional criteria in the proposed procedure that will determine whether such an outcome is plausible. For example, if an FM station seeks to change its community of license by minor change application, but such station is limited to involving only itself, the process is basically unusable. There are some examples of

FM stations that want to change their community of license without making any technical changes, but such actions are rare. The demand for FM spectrum space continues to be at a premium, and this in turn has led to spectrum congestion in the more populous areas of the country. Technical modifications that are usually required in upgrades, COL changes and site relocations become more complicated and more involved as spectrum congestion increases. As a result, the vast majority of modifications required to change COLs and accomplish upgrades by minor change will typically require the participation of a minimum of six to eight stations. To limit the number of communities to fewer than this is to produce a procedure that is unrealistic and counterproductive and, in the long term, creates more frustrations than it solves. One way the Commission could hold the number of stations to a minimum would be to discontinue the requirement that all participating stations in a COL change be required to show a fully spaced site when they modify. The Commission's rules often require that a station's allotment reference be changed by less than one kilometer, which greatly increases the number of stations in a filing.

The vast majority of FM station enhancement procedures, especially those seeking COL changes, require at least one channel substitution to an existing licensee. Usually such a substitution is to a non-mutually exclusive ("MX") channel to the one currently being used. The existing contingent application process does not allow for this type of channel substitution on a non-MX basis. In order to create a flow of various station enhancements by application involving as few stations as possible, especially for applications involving COL changes, the Commission must also modify the contingent application rule to allow the use of non-MX channel substitutions. Such substitutions would not be "show-cause" substitutions. Rather, they would only apply to licensees willing to have their facilities modified to operate on a different channel when such

substitutions facilitate spectrum changes and/or enhancements. Often the substitute channel is created by other spectrum changes inside the project or filing. In other instances a vacant and unused channel is available to be used for substitution. In any event, the number of stations involved in enhancements by application can be drastically reduced if the MX requirement of the existing contingency application process is modified as discussed herein.

The current contingent application process is well conceived and works extremely well. The only other significant problem (other than the MX limit discussed above) is the limitation that only four stations can be involved. If the instant NPRM is to accomplish its stated goal of, among other things, eliminating the current backlog in the Allocations Branch, the procedure must (i) follow the existing contingent application process, (ii) raise the limit on the number of stations that can be involved to eight and (iii) provide the option of involving both AM and NCE stations. Allowing only one station per application to seek a COL change appears to reveal a misguided hope which will not achieve the desired results.

3. Additional comments concerning community of license changes by application (minor change).

No one wants to practice for several months to play a sport that is subject to a change in the rules once the event is underway. Similarly, only more so, broadcast licensees proceed with fear and trepidation in AM and FM spectrum modifications that involve large amounts of capital due to the Commission's propensity to deviate from established precedent and to change procedural rules as they apply to certain filings as such filings are being processed. Most licensees simply want a level playing field and consistency in the application of the rules under which they file. The Commission has an opportunity with the current NPRM to correct many of the procedures that have become

antiquated with the maturity of the aural broadcast spectrum. Eliminating such drastic changes in procedural rules is a very good place to start. To summarize this section, the Commission needs to give very careful consideration to the changes proposed in the instant NPRM that eliminate any need for the abandonment of precedent for procedural rules during the processing of any AM or FM filing.

In paragraph 28 of the NPRM, the Commission expresses concern over the vast migration of signals from the rural to the urban areas. This concern is totally unfounded. If the current FM spacing rules continue to be adhered to, and the AM (and NCE) protected and interfering contours remain intact, the very nature of station separations will eliminate such concerns. Furthermore, an abundance of signals in an urbanized area creates the opportunity to provide programming to clusters of listeners within ethnic and age groupings that they would not receive if no such abundance existed. It is not uncommon for elderly listeners to express the thrill of traveling to larger markets and returning to express their joy in hearing radio programming designed especially for them. This type programming is financially possible when an ethnic or age grouping is clustered in an urbanized area, but not when only a few listeners are spread over a wide rural area.

Also in paragraph 28 of the NPRM, the Commission asks whether there should be restraints on moving signals from a community with a few aural services to one that has many. The answer to that question is yes, there must be restraint, but such restraint should be based on the number of signals in each community. The very nature of the required signal separations on third, second, first and co-channels serves as a buffer to prevent the Commission's concerns from coming to fruition.

Finally, in paragraph 28 of the NPRM, the Commission poses a question concerning public notices for stations proposing to use the application process to change COL. It is easy to understand why this question is posed. However, the end result would be a deluge of additional work for the staff related to minor complaints and objections. To be more specific, many of the clutter now on file in the COL and upgrade process results from the misuse of the system by broadcast licensees themselves. Regrettably, competitors within a market often use the Commission's procedures as a method to prevent new and additional signals. They feel that a proposed signal which could penetrate their market that is delayed or even denied is a signal with which they do not have to compete. The beauty of the application process is the immediate cut-off protection, which would eliminate such gamesmanship. To require applicants to publish notices in a local newspaper, or to broadcast notices on the air is to invite potential competitors to entice residents of the community being vacated to flood the Commission with objections to the proposed move. To use a term from the Commission's own NPRM, both AM and FM are mature services and as such should not require these notices.

4. Removing the Table of Allotments from the Commission's rules.

This proposal to remove the Table of Allotments from the Commission's rules was not part of the original First Broadcasting petition. It is unclear what the removal of the Table of Allotments from the Rules would accomplish. As a result, we would propose that additional study and issuance of a Further Notice of Proposed Rule Making by the Commission are necessary prior to taking such a step. A closer examination may determine that the removal of the Table is a means of reducing the workload of the staff. However, such removal could also allow additional summary interpretations of both

existing and future procedural rules that change during the processing of applications and petitions.

B. The Commission Should Mandate the Filing of Form 301 When Filing Petitions to Amend the Table of Allotments to Add an FM Allotment.

The proposal to mandate the filing of Form 301 when filing petitions to amend the Table of Allotments to add an FM allotment is one of the most favorably viewed proposals that the Commission has considered in many years. The basic requirement that petitioners demonstrate their seriousness concerning their requested allotment of a channel to a community can easily be demonstrated by requiring the payment of a filing fee accompanying a Form 301. In addition, when additional spectrum changes are required to facilitate clear spacing for an allotment, each proposed modification should be accompanied by a Form 301 and a filing fee. These requirements go to the very heart of the allotment process and, in the future, would be used only by the serious broadcaster.

BBA's position on this issue differs from that of the Commission only in the Commission's proposed policy regarding the dissolution of a myriad of allotments that will never be used. A policy should be adopted that provides for the immediate cancellation of any allotment that does not receive any bids in the auction process. It is unreasonable and unfair that many of these allotments which were placed in the Table by frequent filers should be allowed to revert to a 'first come-first served' category.

Finally, a petitioner should be allowed to call an allotment that is currently unused into review if he/she/it were the only parties expressing interest. At the petitioner's discretion, such allotments could be removed from the Table if its interest has waned. Often petitioners request allotments only to discover later that they no longer wish to pursue the bidding process. Unwanted allotments should not be allowed to take up valuable spectrum space.

C. The Commission Should Not Limit the Number of Channel Changes that May be Proposed in One Proceeding to Amend the Table of Allotments.

The Commission acknowledges that the proposal to limit the number of channel changes that may be proposed in one proceeding to amend the table was not submitted by First Broadcasting but, rather, was introduced on the Commission's own motion. The lack of public interest justification is quite evident in this item. This is not the first time the Commission has purposely manipulated the procedural rules in order to limit or reduce the engineering difficulty factor. As the difficulty on any filing is reduced, so is the effort required by the Commission to approve or reject the filing.

This mentality may have never been more evident in the life of broadcast regulation than in the Commission's interpretation of the delta h provision in connection with the use of the Longley-Rice Model (tech note 101). For years this alternative method for predicting signal coverage was allowed by the Commission. The only requirement was that the signal must vary more than 10% from that of the standard f(50,50) method. Numerous applicants were given authorization for transmitter sites that enhanced their facility and, therefore, made it possible to better meet the public interest. In fact, a consulting firm known well to BBA had more than twenty-five of such grants for various clients, three of which were in the Meridian, Mississippi area alone. The broadcast engineering community is almost unanimous in its agreement that the Longley-Rice model is much more reliable and accurate than the standard f(50,50) method. However, the Longley-Rice model is also more difficult to process since it requires an additional layer of examination and processing. Therefore, using the same thought

process of 19th century developers of the typewriter,[2] in order to greatly restrict the complex Form 301 Longley-Rice applications, the Commission re-interpreted the definition of the term 'terrain varies widely' from the common use of 10% more than the terrain variation factored in on the f(50,50) curves, to delta h numbers that eliminated in excess of 70% of the United States. In doing so, the Commission abandoned a more scientific method of accurate signal prediction, as well as the public interest that could be realized by FM station improvements. However, this re-interpretation certainly did reduce the tech note 101 processing workload.[3] Now this same mindset is being applied to the Commission's proposal to reduce the total number of stations in any Table amendment process.

There are reasons why this proposal will not provide the processing relief the Commission desires. First, the Commission has suggested that large proceedings should be divided into numerous smaller ones of five or fewer stations. This is not possible since the Commission does not allow contingent petitions for rule making or contingent counterproposals. In addition, many proposed station modifications are inextricably intertwined to the point that the entire plan depends on one-sub move. That sub-move is often made possible only because of another move (channel, class or COL change, site relocation, etc.) in the same proposal. BBA explained above that not all broadcasters consider the systematic enhancement of AM and FM radio stations a welcome sight,

[2] After being used, the first typewriter keys returned to their rightful position by the pull of gravity only. Therefore, as operators became more proficient, a problem developed when users could type faster than the keys could return. Hence came an outcry from users about a constant key-jamming problem. No immediate engineering solution was available so the decision was made to change the keyboard to slow down the operator. This gave rise to the commonly called 'qwerty configuration.'

[3] The change in the delta h qualifications was issued in a footnote of a deficiency concerning proposed Longley-Rice use by KMAJ Topeka, KS. When asked why this was done, the staff told the applicant that this had always been the requirement and that previous grants were deviant. Privately, staff members stated that the delta h decision was to 'stem the tide' of feared Longley-Rice applications.

especially when it creates additional in-market competition. Therefore, such broadcasters are willing to spend large amounts of money in 'strike applications' and 'block petitions.' If larger development plans are filed in smaller increments it will become obvious to all what the original petitioner's ultimate goal is and unfriendly parties will take all measures to attempt to block it. This would usually involve numerous additional filings with the Commission by all parties, during which time the public is denied the additional service the enhanced services would provide.

Second, the majority of large petitions have several consent statements from the various participating station whereby these stations agree to the modifications proposed in the petition or counterproposal. The vast majority of these licensees have their proposed modification reviewed by their legal and engineering counsel to make sure that the proposal is in compliance with current Commission rules. Consequently, large proposals are usually correct at filing due to the close scrutiny given by multiple professional parties. The division of a large filing into smaller increments makes it impossible for participating stations to receive competent counsel since the spectrum is in constant change. The dynamic nature dictates that what is represented by counsel to stations being modified in the first level of a filing is not necessarily what will be available at an enhancement's conclusion. Therefore, many proposals will be filed with the Commission and subsequently dropped because of spectrum factors outside the scope of the enhancement proposal that make the original proposal legally or technically impossible to ultimately accomplish. This constant filing and subsequent dismissals will tax the Commission's resources without any gain in enhanced service and, therefore, will lead to no gain in public interest.

Third, the spectrum is not used-up or consumed by large enhancement plans that require the participation of several stations[4]. In fact, BBA and its affiliated business entities have participated in excess of ten station modifications that were possible as a direct result of larger plans being completed. In addition, BBA currently has several plans being developed that were created as a direct result of other rule making grants accomplished by licensees other than BBA or its affiliates. The main point is that, typically, large proposals, by they very nature, create station and spectrum opportunities once the large proposal is completed. Over 95% of such opportunities occur in rural and small market areas. BBA is uniquely qualified to discuss this area since it is the field in which its business services are used.

Fourth, it seems that the Commission has grown suspicious of any parties involved in the so-called broadcast development field. This suspicion appears to carry over to larger group operators that are involved in improving their stations through enhancements. Perhaps some of the suspicions are justified, but many of the filings made as petitions or counterproposals are structured to avoid the nuisance of frequent filers and classic 'greenmailers,'[5] rather than to circumvent the rules. It must be noted that not all frequent filers are involved in greenmail and not all greenmailers are frequent filers, although the two practices track very closely. The adoption of many of the practices contained in the instant NPRM will eliminate the vast majority of the methods used by persons and parties involved in the aforementioned practices. BBA has business associations with many of the business entities involved in broadcast station

[4] As a result of the completion of MM 98-198, six participating stations were able to receive upgrades in small or rural markets. One (Anadarko, OK) is now a minority owned maximum class C as a direct result of the completion of the modifications in MM 98-198.

[5] "Greenmailers" is a term generally used for persons and parties involved in filing documents before the Commission designed to delay and/or block an enhancement of a broadcast facility. The greenmailer is in turn looking to receive illegal compensation for withdrawing and 'getting out of the way.'

enhancements. It appears that in this community there is great respect for the spectrum much like those involved in the timber industry have respect for the woodland. If the Commission (i) adopts COL changes by application under an extension of the current contingency application plan,[6] (ii) requires a filing fee for every station modification sought by application and/or petition, especially petitions for new allotments and (iii) gives immediate cut-off protection to all modifications filed as an application, the role of the frequent filer and greenmailer will have been eliminated. The role of the broadcaster or the developer will then be to only satisfy the requirements of the Commission, not constantly look over its shoulder for ambushes from frequent filers and greenmailers.

Fifth, the Commission is apparently in conflict with itself concerning the limit of five stations allowed in any one proposal. In the instant NPRM, comments are requested on tying the proposed COL change by application to the current contingency application rule. This rule presently has a limit of four participating stations, but expanding the number to six is being considered.[7] If the contingency application process is expanded to six and the petition/counterproposal process is limited to only five, the need for the entire Allocations Branch has been eliminated. How can the Commission justify expanding the contingency rule while severely restricting the rule making process?

Finally, the proposal to limit all petitions/counterproposals to only five stations has an impact that directly flies in the face of public interest; i.e., it greatly limits creativity on the part of licensees, attorneys, engineers and broadcast developers. The Commission has long held that additional aural services give a platform for the dissemination of diverse views and opinions. In the NPRM, the Commission lists three petitions/counterproposals as examples of the staff being required to "untangle Gordian

[6] This includes the expansion of participating stations to eight, including the intermingling of AM stations
[7] BBA has presented a very strong argument to expand the COL/contingency process to eight stations.

knots." For the record, the same consulting firm designed all three of those examples. What the NPRM does not say is that all three were ultimately granted,[8] creating ten immediate FM station enhancements, twelve enhancements made possible as a direct result of the three proceeding completion, and a ripple effect that is still continuing today. A limit of five participating stations in any one proposal does not consider the public interest, American innovation and creativity, or the Commission's mandate under 307(b).

To conclude BBA's discussion of the Commission's proposed limit of five participating stations in a petition/counterproposal process, BBA is aware of the extra effort it takes to grasp a petition/counterproposal when 30 or more stations are involved. As discussed earlier, BBA is involved in the enhancement of small market and rural AM and FM radio stations. In this process it is required to review potential scenarios developed by interests outside BBA. Usually these scenarios are defective in some way and, as a result, they are extremely difficult to follow. The Commission has been given the authority to affix filing fees based on the number of hours required for processing. The filing fees for a petition/counterproposal are included in the NPRM. Using these two statements as a basis, BBA proposes that the Commission should require a multi-tiered filing fee based on the number of stations proposed in a petition/counterproposal. The fee should not be based on the end results, i.e. population of the enhanced stations, but on the number of stations proposed for modification. For example, the Commission seems to feel that it can process a five-station petition/counterproposal without difficulty. Therefore, the filing fee would be the standard filing amount for the number of stations one through five. However, the addition of station number six requires that all six

[8] Ardmore, AL is the reference community in this proceeding since it is alphabetically the first community. In an unprecedented action the Commission chose to 'split' this section of the petition from the body and deny it. However, the main body or balance of the petition involving upgrade enhancements at Hoover and Tuscaloosa, both Alabama, and COL enhancements at Trussville, AL and Okolona, MS were granted even though there were eight counterproposals against the original petition.

stations be charged a difficulty fee of 1.5 times the regular filing fee retroactive to stations one through six. The next tier can begin at station ten with a difficulty factor of two times the normal filing fee retroactive to stations one through ten. The final tier can begin at station fifteen with a difficulty factor of 2.5 times the normal filing fee retroactive to stations one through the total number of stations involved.[9] The total number of stations involved should include vacant allotments and the proposed COL reassignment, pattern modification, etc. of any AM stations involved. By utilizing this approach the Commission would accomplish the following: (1) entice petitioners to keep the number of stations to a minimum; (2) entice all petition/counterproposal filers to make sure that their petition is in compliance with the Commission allotment rules both legally and technically; (3) eliminate all but the serious petitioners/counterproposals from participating in the process, thereby ridding the Commission of the frequent filer/greenmailer problem; (4) reduce the number of filings with large station numbers, thereby freeing up more of the staff's time; and (5) since the majority of such filings would be uncontested, the *ex parte* provisions of the rules would not come into play and the petitioner/counterproposal's legal and technical counsel could attend private meetings with the staff to explain any question that may arise. In addition, the Commission could include provisions whereby petitioners/counterproposals can request a waiver/reduction in the accelerated fees after the petition/counterproposal is filed. If the waiver/reduction request is granted, the petition/counterproposal would stay on file. If the waiver/reduction request is denied, the petition/counterproposal would be dismissed.

[9] The NPRM lists a current filing fee of $2,809. Under the BBA proposal, if a petition/counterproposal is filed involving 25 stations, the filing fee per station is accelerated to $7,022 per station, or a total to the Commission of $175,562.50.

As discussed above, this provision is only workable if there is a mutual, professional, business-like attitude between the regulator and the regulated. Adoption of the items in the NPRM, with certain modifications, could significantly improve this relationship. Much has been said about the AM and FM band becoming a mature medium. For this very reason, a seemingly developing Commission attitude that is more concerned with its workload than with the interests of the listening public is not reason enough to place a limit on the number of stations that can be placed in a petition/counterproposal. However, the Commission does have at its disposal a method to confront what it considers to be a major problem by using its authority to charge fees based on the number of hours used to process a request.

D. Circumstances Under Which the Relocation of a Community's Sole Local Transmission Service to Become Another Community's First Local Transmission Service is in the Public Interest.

BBA has reviewed the comments included in the NPRM as they relate to the deletion of a community's sole service to allow it to become another community's first local service. Paragraph #43 has some excellent and well thought out points. The Keymarket proposal that a community be served by only a 60-dbu contour is an excellent suggestion. The adoption of 100% coverage of the community of license by a 60-dbu contour in essence re-establishes the loss the broadcast industry incurred when the Commission disallowed the use of the Longley-Rice model in the majority of the country. BBA's position is based on the fact that one of the qualifications for Longley-Rice is that the 60-dbu f(50,50) cover 100% of the community of license. The AMS criteria are also well conceived. However, there is a fundamental flaw in the Commission's methodology concerning remaining services. Presently, AM daytime stations are not considered in the establishment of remaining service. In addition, nighttime AM is only considered to its

NIF contour. In order to implement the AMS remaining services proposal effectively this criteria must be modified. Daytime AM and fulltime AM with a small NIF can be considered to their day .5 mV/m when their service areas lie inside the nighttime protected sky wave of a class A AM station. In essence, for each class A AM station that provides a protected nighttime 50% sky wave to the remaining services area, one daytime AM (or diminished nighttime AM) station can be used to demonstrate remaining service. If the nighttime sky wave of a class A station cannot be considered, the Commission should remove all protection to this service. That is not in the public interest; therefore, the Class A AM nighttime sky wave can be used in conjunction with the .5 mV/m contours of the daytime AM stations.

The concept of relocating a community's sole aural service in order to serve a larger community is a viable concept, but in the empirical world the identification of larger communities without service, and ones in which the technical requirements allow a city grade service, even if it is 60 dbu in lieu of the present 70 dbu, will be very few in number. However, if the spectrum is to provide the largest number of people with a local aural service, this procedural rule should also be approved exactly as First Broadcasting requested along with the modifications proposed by AMS and Keymarket in paragraph 43 of the NPRM.

III. CONCLUSION.

Not every petition/counterproposal that a licensee or broadcast developer files can be construed to be in the public interest. However, when it meets all of the legal, technical and processing criteria that the Commission has set forth, such filing deserves to be reviewed and a final decision should be rendered within a reasonable period of time. The processing time has constantly risen over the past five years to the point that, at

present, BBA has filings that have not yet been processed despite a four year wait.[10] BBA also is aware that many of the Commission's delays are inherent to the processing system. First Broadcasting was also aware of this problem when it filed the initial petition for rule making to streamline the AM and FM facility modification process. BBA has reviewed the proposals of First Broadcasting, the comments of other broadcast entities and those of the Commission and has offered herein its thoughts on a more efficient method of processing aural service modifications. The adoption of the First Broadcasting petition, together with the modifications proposed herein, would allow for a more efficient flow of minor change petition/application filings to the Commission for review and processing, leading more quickly to the point of either a grant or a denial. All of this can be achieved in a timely manner. The current process is defective and needs to be modified. The attitudinal issues that have evolved between the Media Bureau and licensees/developers are exacerbated by the staff's work overload and the industry's desperate need to modify its existing broadcast facilities in a timely manner.

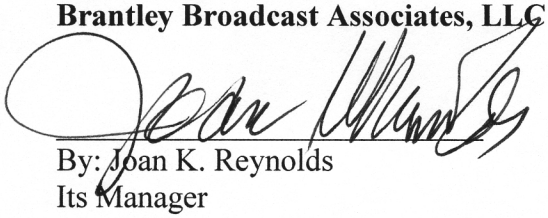
I, Joan K. Reynolds, as manager of BBA, hereby verify that the foregoing is true and correct to the best of my knowledge, information, and belief.

[Signature on Following Page]

[10] Since BBA often works as an independent developer and not as a licensee or licensee option holder, its name is often not on file with the Commission in many of its development projects.

These comments are filed with the Commission in response to MB Docket No. 05-210, RM-10960.

Respectfully Submitted,
Brantley Broadcast Associates, LLC



By: Joan K. Reynolds
Its Manager

415 North College Street
Greenville, AL 36037

This 03 day of October, 2005